

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCReporter@sjc.state.ma.us

SJC-12793

CARE AND PROTECTION OF A MINOR.

March 6, 2020.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, the biological father of a minor child, appeals from a judgment of a single justice of this court denying his petition pursuant to G. L. c. 211, § 3.^{1,2} We affirm.

The child was the subject of a care and protection proceeding in the Juvenile Court. After the trial concluded, the petitioner filed a "Verified Emergency Time is of the Essence Ex Parte Petition for Answer to Question of Law" in the

¹ The petitioner purports to prosecute this petition "ex parte." The parties in the underlying litigation were not named as parties to the petition, and there is no indication that they were served with the petition. They have not appeared in this appeal. See S.J.C. Rule 2:22, 422 Mass. 1302 (1996) (requiring petitions filed pursuant to G. L. c. 211, § 3, to "name as respondents and make service upon all parties to the proceedings before the lower court"). See Adjartey v. Central Div. of the Housing Ct. Dep't, 481 Mass. 830, 833 n.6 (2019); G.G., petitioner, 462 Mass. 1004, 1004 n.2 (2012).

² This is the second petition, pursuant to G. L. c. 211, § 3, that the petitioner has filed seeking a determination that he had a right to a jury trial in a care and protection proceeding involving the minor child. A different single justice of this court denied relief on the first petition. After the petitioner failed to timely appeal from that judgment, his motion for leave to file a late notice of appeal was denied.

county court, which the single justice treated as a petition pursuant to G. L. c. 211, § 3, and denied. In essence, the petitioner sought a declaration that he had a right to a jury trial in the care and protection proceeding.

The single justice neither abused his discretion nor made a clear error of law in denying the petition. See Commonwealth v. Fontanez, 482 Mass. 22, 24 (2019). As we have said many times in circumstances like this, "[t]he single justice is not required to become involved if the petitioner has an adequate remedy," as the petitioner did here. Id. The petitioner could have filed a notice of appeal in the Juvenile Court, see Mass. R. A. P. 4 (a), as appearing in 481 Mass. 1606 (2019), and appealed to the Appeals Court from the decree of the Juvenile Court terminating his parental rights. See Adoption of Douglas, 473 Mass. 1024, 1026, 1029 (2016) (parent whose rights have been terminated "may press an appeal challenging the adjudication of the termination proceeding").

In addition, based on the materials before him, the single justice was well within his discretion in concluding that extraordinary circumstances requiring exercise of the court's supervisory power were not present. The petitioner failed to create a record demonstrating his allegations, i.e., he did not "provide copies of the lower court docket entries and any relevant pleadings, motions, orders, recordings, transcripts, or other parts of the lower court record necessary to substantiate [his] allegations." Gorod v. Tabachnick, 428 Mass. 1001, 1001, cert. denied, 525 U.S. 1003 (1998). And as stated, see note 1, supra, he also failed to "name as respondents and make service upon all parties to the proceedings before the lower court," in violation of S.J.C. Rule 2:22, 422 Mass. 1302 (1996).

Judgment affirmed.

The petitioner, pro se.